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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional): 076705-200501/US

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on August 11, 2008

Signature /Anne Collette/

Typed or printed Name Anne Collette

Application Number	Filed
09/808,475	March 13, 2001

First Named Inventor: Scott Faber

Art Unit	Examiner
3688	DANIEL LASTRA

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

☒ attorney or agent of record.
Registration number 40,216.

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

/John Ward/
Signature

John Ward
Typed or printed name

650-328-8500
Telephone number

August 11, 2008
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 forms are submitted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Scott Faber, et al	Examiner:	DANIEL LASTRA
Serial No.:	09/808,475	Group Art Unit:	3688
Filed:	March 13, 2001	Confirmation:	3558
Title:	APPARATUS AND METHOD FOR RECRUITING, COMMUNICATING WITH, AND PAYING PARTICIPANTS OF INTERACTIVE ADVERTISING		

REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Claims

Claims 1-5, 7-12, 14, 16-20, 22-27, 29, and 31-45 are pending. Claim 1 is representative.

1. A computer implemented method comprising:

providing a list of advertisements to be displayed to a user, wherein one or more of the advertisements comprise

a link to be selected by the user to establish a telephonic connection to conduct a real time communication between the user and an advertiser,

a rate to compensate the user to conduct the real time communication with the advertiser, and

an indicia of whether the advertiser is currently available for real time communication with the user;

receiving, from the user, a selection of the link from the list of advertisements;

responsive to the selection of the link, causing the establishing of the telephonic connection for a session of the real time communication between the user and the advertiser to advertise one or more items;

via a computer, compensating the user based on the rate and a duration of the real time communication between the user and the advertiser to generate a balance to be paid to the user; and

during the session, allowing the user to purchase the one or more items advertised by the advertiser in the session of the real time communication by deducting from the balance to be paid to the user. [Emphasis Added]

References

De Rafael (US 2002/0116256) discloses "interactive advertisements that pose questions for users and generate further questions in response to users' previous answers" (lines 6-8 of [0009]). The "advertisements are stored in a database on a central computer operated by a company that publishes the advertisements" (lines 10-12 of [0009]). "In accordance with the advertisement selected by the user, ***the remote computer*** displays questions for the user" (lines 1-2 of [0013]). "When the user responds to the final question of the sequence, the remote computer credits the user's account" (lines 17-18 of [0013]). "The credit represents value or consideration for the user having answered the questions." (lines 1-2 of [0014]).

De Rafael teaches away from compensating the user based on a time period by stating that the end user could easily "ignore the substance of the advertisement" and merely accumulate the amount of time to receive credit (see, e.g., [0007], De Rafael).

Dedrick (US 5,724,521) discloses charging end users for consuming certain types of information (e.g., database) and crediting end users for consuming other types of information (e.g., advertisement). In ***debit models*** of Dedrick, the end users pays for access to information (e.g., database); and in the ***credit model*** of Dedrick, the publisher credits the end users to encourage the user to consume an advertisement.

Specifically, Dedrick discloses three debit models: Pay Per View, Pay Per Byte, and Pay Per Time. Dedrick explicitly defines a "Pay Per View" debit model, in which "***the end user pays*** an associated cost each time the user consumes a unit of information" (Col. 13, lines 18-21, Dedrick). Dedrick (Col. 13, lines 23-25) describes "payment on a per byte or word of information viewed by the end user, or payment for the period of time that the user consumes the information" for "Pay Per Byte" and "Pay Per Time". These debit models "may be desirable when the end user is accessing a database" (Col. 13, lines 25-29, Dedrick).

Dedrick describes only ***one*** "credit model", in which the publisher "credits the end user's account each time the user views a unit of information" (Col. 13, lines 54-56, Dedrick), which is merely a "Credit Per View" model when the description of the credit model is compared to the explicit definition of the "Pay Per View" model. Specifically, Dedrick provides an example of the "Credit Per View" model, where "the end user may view an advertisement, wherein the charge associated with the unit of information viewed is credited to the end user's account and debited to the advertiser's account" (Col. 14, lines 20-24, Dedrick).

In summary, Dedrick only discusses one credit model, which is limited to a "Per View" type (see, Col. 13, lines 54-56; Col. 14, lines 20-25, Dedrick). The "Per Time" type discussed in Dedrick is limited to the end user paying the publisher according to the period of time that the user consumes the information (Col. 13, lines 24-25, Dedrick), which actually ***teaches away*** from paying the end user according to a communication duration as claimed by applicant.

Kolls (US 6,807,532) discloses "a user responds to an advertisement and as required routine 2300 connect the user by phone line to a business. While speaking with a sales representative the user orders a product." (Col. 47, lines 12-15, Kolls). Thus, the disclosure of Kolls is limited to providing a phone connection via an advertisement to order a product.

Examiner's Positions:

The examiner rejected pending claims under 35 U.S.C. §103(a) as being unpatentable over De Rafael, in view of Dedrick, Kolls (and other references which were relied upon for other limitations not discussed here).

The examiner admitted that De Rafael fails to teach that the interactive advertisement comprises a link to be selected by the user to establish a telephonic connection to conduct a real time communication between the user and an advertiser. The examiner modified De Rafael, in view of Kolls, to include the capability to "connect the user by phone line to a business".

The examiner incorrectly asserted that Dedrick (Col. 13, lines 1-65; Col. 15, lines 25-30) teaches a system that compensates users for interacting with advertisements where said compensation is based upon a "pay per time" rate of said interaction.

The examiner then jumped from the teaching of Dedrick, De Rafael and Kolls to the claimed feature of compensating the user based on the rate and a duration of the real time communication between the user and the advertiser over the telephonic connection established via the user selecting the link in the advertisement.

Errors and Deficiencies in Rejections:

A. *Dedrick does not disclose compensating users based on "pay per time"*

The examiner mistakenly mixed the teaching of two separate models of Dedrick, i.e., "pay per time" and "credit per view", to generate the incorrect assertion that Dedrick discloses compensating end users based on "pay per time". Actually, in the "pay per time" model of

Dedrick, the end user pays for the period of time that the user consumes the information (e.g., accessing a database). In the credit model, Dedrick merely discloses a "per view" type.

It is improper to take elements of different models to assemble a new model that does not exist in the cited reference and use the new model as if it were disclosed in the reference. Thus, the rejection of the pending claims under 35 U.S.C. §103(a) is therefore improper.

B. *De Rafael explicitly teaches away from compensating based on time*

De Rafael teaches away from compensating the user based on a time period, by stating that the end user could easily "ignore the substance of the advertisement" and merely accumulate the amount of time to receive credit ([0007], De Rafael).

The examiner ignored this strong evidence of De Rafael teaching away from compensating the user based on a time period. Instead, the examiner relied upon a less relevant teaching of De Rafael to support the examiner's combination, by pointing to the discussion of "Advertiser 14 may, for example, have processor 10 award more credit for viewing a lengthier interactive advertisement 24" in Paragraph [0036] of De Rafael for support.

However, the length/size of the advertisement is not an indication of the duration of interaction with the central computer. Some users can go through a lengthier advertisement faster than other users going through a shorter advertisement. De Rafael teaches away from compensating the user based on a time period of viewing by stating that the end user could easily "ignore the substance of the advertisement" and merely accumulate the amount of time to receive credit ([0007], De Rafael). Thus, De Rafael's teaching away from compensating the user based on time applies even in the light of the statement of "more credit for viewing a lengthier interactive advertisement" made in De Rafael. Because De Rafael teaches away from the invention, the rejection of the pending claims under 35 U.S.C. §103(a) is therefore improper.

C. *Wide gap between Dedrick, De Rafael and Kolls and the claimed feature*

At most, a combination of De Rafael, Kolls and Dedrick would merely have an interactive advertisement which is 1) to allow the user interact with a central computer to answer web questions to get credits (according to De Rafael); 2) to allow the user to have a phone connection with the advertiser to order products (according to Kolls); and 3) to allow the user to get credit for viewing the advertisement based on a "per view" model (according to Dedrick).

There is a wide gap between such a combination of De Rafael, Kolls and Dedrick and the Applicant's claimed feature of compensating the user based on the rate and a duration of the real time communication between the user and the advertiser over the telephonic connection established via the user selecting the link in the advertisement.

In the combination of De Rafael, Kolls and Dedrick, the user gets credits for interacting with the central computer or viewing the advertisement. The user could have a telephonic communication with the advertiser to order products, but not be compensated for the duration of the telephonic communication to order products and thus not be compensated based a duration as claimed by Applicant.

As a result, there is a wide gap between crediting a user for web questions provided to a central computer (or for viewing interactive advertisements) as provided in the combination and Applicant's claimed feature of compensating based on a duration of a telephonic communication with the advertiser. The examiner also failed to provide an explicit analysis required by MPEP[1] to cover the gap. Without such an explicit analysis, the rejections of the pending claims under 35 U.S.C. §103(a) would be similar to piecing words together from a dictionary to form claims using the claims as a template.

Thus, when viewed together, the cited references as a whole fail to disclose or suggest Applicant's claimed features. Moreover, the cited references actually teach away from the combination suggested by the examiner. Therefore, the pending claims are patentable over the cited references. The rejection of the pending claims under 35 U.S.C. §103(a) should therefore be withdrawn.

Respectfully submitted,

Date: August 11, 2008

/John P. Ward/
John P. Ward
Reg. No. 40,216

CUSTOMER NUMBER 64494
GREENBERG TRAURIG, LLP
(650) 328-8500 Telephone
(650) 328-8508 Facsimile

[1] "The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in KSR noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit." (MPEP 2141.III)